Satheesan a/l TA Menon v Ayginus Shirley a/p John

HIGH COURT (SHAH ALAM) — DIVORCE PETITION NO 33–16 OF 2008
YAACOB MD SAM J
18 JUNE 2012

Family Law — Divorce — Irretrievable breakdown of marriage — Divorce petition filed after 10 years of parties living apart — Whether parties unable to live together as married couple — Whether marriage ought to be dissolved despite respondent's religious beliefs against divorce

The petitioner, an engineer, left the matrimonial home after about eight years of marriage to the respondent who quit her job with a bank six months after the marriage to become a housewife. She relied entirely upon the petitioner for financial support for the upkeep of the matrimonial home and maintenance of the couple's only child, a daughter. Shortly after the parties separated, the magistrate's court ordered the petitioner to pay the respondent a monthly maintenance of RM3,500. The daughter was about 13 years old when the petitioner left the matrimonial home. About 10 years after the parties had lived apart, the petitioner filed the instant petition for divorce from the respondent. In it he also sought an order that his half undivided share in the matrimonial home, which was registered jointly in the names of both parties, be transferred to the respondent and his daughter equally. By the time the petition was heard the daughter was 25 years old and a degree holder but she continued to live with the respondent in the matrimonial home. Due to her religious beliefs, the respondent, a practising Catholic, cross-petitioned for a judicial separation order instead. She also sought the transfer to her of the petitioner's undivided half share in the matrimonial home and a monthly maintenance of RM10,000 contending that she required that amount to enjoy the same standard of living she had when the parties lived together and to make up for the full-time employment she gave up to look after the household. The respondent also sought orders that she be entitled, inter alia, to half the amounts in the petitioner's savings, current and fixed deposit bank accounts, half his salary and bonuses between the date of their separation and the date of the decree nisi and half of his Employees' Provident Fund ('EPF') savings. The respondent also wanted the petitioner to pay for a new car for her costing not more than RM150,000 and to be responsible for all her medical and hospitalisation costs in any private hospital. Alternatively, she prayed for a lump-sum payment of RM4m.

Held, granting the divorce and ordering each party to bear their own costs:

(1) After considering the totality of the evidence the court was of the view the

marriage had irretrievably broken down and the parties could no longer be expected to live with one another. The marriage ought to be dissolved irrespective of the religious beliefs of the respondent, a practising Catholic. Decree nisi was granted to be made absolute in three months (see para 7).

(2) Based on the 'means and needs' of the parties, the court was of the view a monthly maintenance of RM5,000 was reasonable to be paid by the petitioner to the respondent with effect from the date of the order (see para 10).

(3) Considering the respondent's contribution towards the purchase of the matrimonial home and its up-keep, it was only fair for the petitioner's share in the property to be transferred to the respondent (see para 11).

(4) The court was of the view the respondent was entitled to one quarter of the remaining amount of the petitioner's EPF as at the date of the order. The respondent had failed to prove her other claims which were all dismissed (see paras 12–13).

[Bahasa Malaysia summary

Pempetisyen, seorang jurutera, meninggalkan rumah perkahwinaan selepas kira-kira lapan tahun perkahwinan bersama responden yang berhenti kerja dengan bank enam bulan selepas perkahwinan untuk menjadi suri rumah tangga. Dia bergantung sepenuhnya ke atas pempetisyen untuk sokongan kewangan untuk penjagaan rumah perkahwinan dan penyelenggaraan anak tunggal pasangan tersebut, anak perempuan. Tidak lama selepas pihak-pihak berpisah, mahkamah majistret memerintahkan pempetisyen membayar responden nafkah bulanan sebanyak RM3,500. Anak perempuan tersebut berumur lebih kurang 13 tahun apabila pempetisyen meningglkan rumah perkahwinan. Lebih kurang 10 tahun selepas pihak-pihak tinggal berasingan, pempetisyen memfailkan petisyen ini untuk perceraian daripada responden. Dalamnya juga dia memohon perintah bahawa setengah bahagian yang tidak dibahagikan dalam rumah perkahwinan tersebut yang didaftarkan secara bersama dalam nama kedua-dua pihak, dipindahkan kepada responden dan anak perempuanya sama rata. Pada masa petisyen tersebut didengar anak perempuan tersebut telah berumur 25 tahun dan pemegang ijazah tetapi terus tinggal bersama responden di dalam rumah perkahwinan tersebut. Oleh sebab kepercayaan agamanya, responden yang mengamalkan Katolik, sebaliknya petisyen balas untuk perintah pemisahan kehakiman. Dia juga memohon pemindahan kepadanya setengah bahagian yang tidak dibahagikan pempetisyen di dalam rumah perkahwinan dan nafkah bulanan sebanyak RM10,000 berhujah bahawa dia memerlukan jumlah tersebut untuk menikmati standard hidup yang sama seperti yang dinikmatinya apabila pihak-pihak tinggal bersama dan untuk menggantikan pekerjaan sepenuh masa yang ditinggalkannya untuk mengurus rumahtangga. Responden juga

memohon perintah-perintah supaya dia berhak, antara lain, kepada sebahagian jumlah wang simpanan pempetisyen, akaun bank semasa dan deposit tetap, sebahagian gaji pempetisyen dan bonus-bonus di antara tarikh perpisahan mereka dengan tarikh *decree nisi* dan sebahagian simpanan Kumpulan Wang Simpanan Pekerja ('KWSP')nya. Responden juga mengkehendakki pempetisyen membayar untuk kereta baru untuknya yang berharga tidak lebih daripada RM150,000 dan bertanggungjawab untuk kesemua kos perubatan dan penghospitalannya di mana-mana hospital swasta. Alternatif, dia memohon untuk pembayaran sekali gus sebanyak RM4 juta.

Diputuskan, memberikan perceraian dan memerintah setiap pihak menanggung kos mereka masing-masing:

(1) Selepas mempertimbangkan keseluruhan keterangan mahkamah berpendapat bahawa perkahwinan tersebut telah tidak dapat diselamatkan dan pihak-pihak tidak dapat lagi berharap untuk tinggal bersama. Perkahwinan tersebut patut dibubarkan tanpa mengira kepercayaan agama responden, pengamal Katolik. *Decree nisi* diberikan untuk dibuat mutlak dalam masa tiga bulan (lihat perenggan 7).

(2) Berdasarkan atas 'pendapatan dan keperluan' pihak-pihak, mahkamah berpendapat nafkah bulanan sebanyak RM5,000 adalah munasabah untuk dibayar oleh pempetisyen kepada responden berkuat kuasa dari tarikh perintah tersebut (lihat perenggan 10).

(3) Mempertimbangkan sumbangan responden kepada pembelian rumah perkahwinan dan penjagaannya, adalah adil untuk bahagian pempetisyen di dalam hartanah tersebut dipindahkan kepada responden (lihat perenggan 11).

(4) Mahkamah berpendapat yang responden berhak kepada satu perempat jumlah KWSP pempetisyen yang masih ada pada tarikh perintah tersebut. Responden gagal untuk membuktikan tuntutan-tuntutannya yang lain yang mana kesemuanya ditolak (lihat perenggan 12–13).]

Notes

For a case on irretrievable breakdown of marriage, see 7(2) *Mallal's Digest* (4th Ed, 2011 Reissue) para 3758.

Cases referred to

Chee Kok Choon v Sern Kuang Eng [2005] 4 MLJ 461, HC (folld)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 77(1), 78

K Periasamy (Raj & Co) for the petitioner.
Selvarajah K Sangarapillai (Chambers of Selvarajah K Sangarapillai) for the respondent.

Yaacob Md Sam J:

[1] This divorce petition dated 25 July 2006 is filed by the petitioner husband seeking for the following orders:

(a) that the said marriage be dissolved;

(b) that the custody of Divya Menon, the only child of the marriage, be granted to the respondent wife;

(c) that the petitioner will transfer his half undivided shares in property known as Blok A-2-10 Palm Ville Condominium, Jalan Lagun Timur, Bandar Sunway, 46150 Petaling Jaya, Selangor to the respondent and said child Divya Menon, equally; and

(d) other relief as this court thinks fit.

[2] Vide Amended Answer and Cross-Petition dated 20 May 2010 (pp 24–48, bundle A), the respondent on the other hand seeks the following order:

(a) bahawa permohonan pempetisyen dalam petisyen rayuan ditolak dan sebaliknya satu perpisahan kehakiman (judicial separation) dibenarkan atas alasan yang diberikan oleh responden;

(b) bahawa pempetisyen memindahmilik separuh bahagian tidak terbahagi atas hartanah yang dikenali sebagai Blok A-2-10, Palm Ville Condominium, Jalan Lagun Timur, Bandar Sunway, 46150 Petaling Jaya, Selangor kepada responden dalam masa tiga bulan dari tarikh decri nisi;

(c) bahawa pempetisyen diperintahkan membayar nafkah bulanan pada kadar RM10,000 setiap bulan pada atau sebelum 5 haribulan setiap bulan kepada responden;

(d) bahawa pempetisyen diperintahkan membayar nafkah bulanan tertunggak pada kadar RM10,000 setiap bulan kepada responden dari tarikh pemisahan;

(e) bahawa pempetisyen diperintah untuk membayar kepada responden satu perdua (1/2) daripada kesemua wang simpanan pempetisyen di akaun simpanannya, akuan-akaun semasa, akuan-akaun deposit tetap dan akaun-akaun yang telah ditutup oleh pempetisyen di mana-mana bank tempatan atau luar negara atas nama pempetisyen atau atas nama pihak ketiga yang berjumlah dalam lingkungan RM5 juta atau lebih;

(f) bahawa pempetisyen diperintahkan untuk membayar kepada responden satu perdua (1/2) daripada kesemua wang simpanan pempetisyen di dalam HSBC Bank Malaysia Bhd yang pada tahun 2008 berjumlah lebih

kurang RM2 juta atau jumlah yang paling tinggi dalam simpanan tersebut sepanjang simpanan pempetisyen;

(g) bahawa pempetisyen diperintahkan membayar separuh (1/2) daripada wang simpanan caruman pempetisyen dalam akaun KWSP kepada responden termasuk duit yang telah dikeluarkan oleh pempetisyen pada tarikh dekri nisi;

(h) bahawa pempetisyen diperintah membayar separuh (1/2) gaji dan bonus yang diterimanya kepada responden dari tarikh pemisahan sehingga tarikh dekri nisi;

(i) bahawa pempetisyen diperintah membayar kos pembelian satu kereta baru yang bernilai tidak melebihi RM150,000 dalam masa 3 bulan dari tarikh dekri nisi kepada responden;

(j) bahawa pempetisyen akan membayar untuk semua perbelanjaan perubatan termasuk pergigian, optikal, perundingan, rawatan dan perbelanjaan penghospitalan untuk responden di mana-mana hospital swasta;

(k) bahawa pempetisyen membayar responden separuh (1/2) nilai matang kesemua insurans di bawah namanya termasuk insuran yang telah di 'redeem' setakat ini;

(l) bahawa pempetisyen menebus responden kesemua perbelanjaan responden ke atas perbelanjaan penyelengaraan rumah matrimoni dan ke atas dirinya;

(m) bahawa pempetisyen membayar satu bayaran sekali gus sebanyak RM4 juta secara alternative;

(n) bahawa pempetisyen membayar kesemua kos guaman ini;

(o) apa-apa perintah sampingan yang difikirkan sesuai dan adil.

ISSUES TO BE DETERMINED

[3] The issue to be determined between the parties are as follows:

(a) dissolution of the marriage between the parties;

(b) or judicial separation between the parties;

(c) maintenance of the respondent; and

(d) distribution of matrimonial assets.

BACKGROUND FACTS

[4] The petitioner is an engineer who is now working in Indonesia in palm oil business. He holds a degree in Mechanical Engineering and in Masters of Business Administration (MBA). According to the petitioner, he is currently drawing a monthly income of RM25,000 which is tax free. He is also provided with a car, driver, maid and accommodation. The respondent is a house wife. She was an officer with United Asian Bank Bhd prior to and at the time of the marriage but had quitted her job six months subsequent to the marriage.

[5] The petitioner husband and the respondent wife were married on 23 November 1991. The petitioner was 54 years old and the respondent was 55 years old at the time of the filing of the petition. The petitioner and the respondent since marriage have stayed together at No 10, Lorong 3/57C, Petaling Jaya, Selangor and the last cohabited address was at Blok A-2-10, Palm Ville Condominium, Bandar Sunway, Petaling Jaya, Selangor ('the matrimonial home') before the petitioner left the matrimonial home in 1999. The parties have living apart since then. There is one child namely Divya Menon (born on 12 December 1986) who is now aged 25 years old and a degree holder. Divya Menon was 11 years old when the petitioner left the matrimonial home. The matrimonial home is registered jointly under the petitioner and respondents' name. The respondent continues to live at the matrimonial home with the said child. After quitting her job, she relied entirely upon the petitioner for monies related to the upkeep of the matrimonial expenses and maintenance of the only child of the marriage.

[6] At the outset, both the petitioner and the respondent agreed that the marriage had irretrievably broken down. Many incidences happened in between. Attempts by the conciliatory body to reconcile the marriage have failed and certificate dated 19 December 2000 was issued certifying that it has failed to reconcile the parties.

[7] After taking the totality of the evidence and based on the testimonies of both the petitioner and the respondent, this court is of the view that the marriage has irretrievably broken down and the parties could no longer be expected to live with one another. Guided from the principle in *Chee Kok Choon v Sern Kuang Eng* [2005] 4 MLJ 461 this court is of the view that the marriage ought to be dissolved irrespective of the religious belief of the respondent a practicing Catholic. Decree nisi is therefore granted and to be made absolute after three months. Prayer (a) of the petitioner's petition is therefore be allowed.

MAINTENANCE

[8] The provision to award maintenance is provided under s 77(1) of the Law

Reform (Marriage and Divorce) Act 1976. The statutory provision for the assessment of maintenance for a wife or a former wife is s 78 of the Act. The assessment will be based primarily 'on the means and needs of the parties'.

[9] The petitioner has set that her current expenses amounting to about RM10,000 per month as detailed out in documents marked as D3, D4, D5 and D6 in bundle C1 and C2, respectively. In 2001 she was awarded maintenance of RM3,500 monthly by the magistrate's court for herself and the child Divya Menon who was 13 years old at the time. Since then she receives the monthly maintenance of RM3,500 from the petitioner till to date. It was contended by the respondent that the RM10,000 prayed for in her cross-petition is to place her in a position to enjoy the same standard of living as she had during the existence of marriage, which she has been denied since the separation. It was also contended that the respondent had given up her full time employment so that she could attend to the needs of the petitioner as well as care for the household. Learned counsel for the petitioner on the other hand contended that the respondent claims are not tenable for the following reason:

(a) there is no mortgage instalment to pay;

(b) no rental;

(c) the house is free of encumbrances;

(d) the respondent's description of her lifestyle seems inexpensive; and

(e) her demeanour and dressing does not appear to be a poor woman nor as a person living a sub-standard life.

[10] As mentioned earlier the power to award maintenance for a wife or a former wife is provided under s 77(1) and s 78 of the Law Reform (Marriage and Divorce) Act 1976. The assessment will be based primarily 'on the means and needs of the parties'. Having considered in totality of the evidence, and based on the 'need and means' of the parties, this court is of the view that a monthly maintenance of RM5,000 is reasonable to be ordered to be paid by the petitioner to the respondent as her maintenance and to take effect from the date of the order. The petitioner is therefore ordered to pay RM5,000 monthly maintenance to the respondent and the maintenance to be paid before the seventh day of the beginning of the month and its subsequent months.

ISSUE ON MATRIMONIAL ASSETS

[11] Matrimonial house which is in the joint name of the petitioner and the respondent. After taking in totality of the evidence specifically on the contribution of the respondent towards the purchasing of the property and its up-keeping, I am of the view that it is only fair for the petitioner's share over the property be transferred to the respondent. I therefore allowed for the

matrimonial home known as Blok A-2-10, Palm Ville Condominium, Jalan Lagun Timur, Bandar Sunway, 46150 Petaling Jaya, Selangor be transferred to the respondent within three months of the order.

[12] As to the claims on the petitioner's EPF which is estimated standing now at RM900,000 this court is of the view that the respondents is entitled 1/4 of the remaining amount of the petitioner's EPF as to the date of the order.

[13] As to the other prayers, I find that the respondent has failed to proof her claims and I therefore dismissed all the other prayers.

[14] Lastly, it is ordered that each party to bear their own costs.

Divorce granted and each party ordered to bear their own costs.

Reported by Ashok Kumar